

**EXHIBIT 5: EXCERPTS OF DEPOSITION OF BOB TYNES**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4  
5

6 HAZEL M. ROBY, as  
7 Administratrix of the  
8 Estate of RONALD  
9 TYRONE ROBY, Deceased,  
10

11 Plaintiff,  
12

13 v.

CIVIL ACTION NO:

14 2:05CV194-T  
15

16 BENTON EXPRESS, INC.,  
17 et al.,  
18

19 Defendants.  
20  
21

22 DEPOSITION OF:  
23

24 ROBERT C. TYNES  
25

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1 Q. Okay. Can you turn to me the section  
2 that would talk about hours of service?  
3 A. Sure.  
4 Q. What section is that?  
5 A. 395.  
6 Q. .3 or something like that?  
7 A. 395 is the whole section that deals  
8 with logs and hours of service.  
9 Q. Okay. Are you there?  
10 A. I'm there.  
11 Q. Let me look at it for a second.  
12 A. I think the one you are looking for is  
13 395.3, the one that was quoted by Mr. Brown.  
14 Q. Yes. Is that in here?  
15 A. Yes. He claims it was J. J. Keller's  
16 interpretation. It is not.  
17 Q. Right. It's actually the Federal  
18 Government's?  
19 A. The Federal Government's  
20 interpretation.  
21 Q. J. J. simply published it, is your  
22 distinction that you're making?  
23 A. Right. They get the plates, and they  
24 just publish it.  
25 Q. Okay. Got you. Were these

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1 interpretations something you relied on as  
2 an enforcement agent and as a consultant  
3 since you've left there?  
4 A. Yes, sir, that's true.  
5 Q. Okay. Sir, moving on. Have you  
6 reviewed any fuel records in this case?  
7 A. No, I don't believe. I have the logs.  
8 I have the trip reports. I don't recall any  
9 fuel records.  
10 Q. And the trip reports and logs are on  
11 the --  
12 A. On the CD.  
13 Q. -- CD. Have you printed any out?  
14 A. No.  
15 Q. You just reviewed what was on the CDs?  
16 A. Correct.  
17 Q. And as you sit here, do you recall any  
18 fuel records?  
19 A. I don't recall any. There may have  
20 been some on the trip reports that indicate  
21 where fuel was purchased.  
22 Q. Did the fuel records in any way  
23 provide you with any information concerning  
24 trying to locate Mr. Craig Stephens at  
25 various times after he left Pensacola?

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1 A. No.  
2 Q. Do you know if he got any fuel after  
3 the time he left Pensacola?  
4 A. I don't believe so. I don't recall  
5 seeing any.  
6 Q. Okay. So if he got any fuel after  
7 leaving Pensacola, you just haven't seen it?  
8 A. That's right.  
9 Q. Would you agree with me according to  
10 the regulations that if a truck driver --  
11 well, tell me what the hours of service  
12 regulations require.  
13 A. Currently?  
14 Q. Yes.  
15 A. They just changed October 1st of this  
16 year. Are you talking about at the time  
17 that this occurred?  
18 Q. Yes. That's even better. Tell me  
19 what applied at the time this occurred.  
20 A. Okay. The 11-hour rule.  
21 Q. And what is the 11-hour rule?  
22 A. It states that a driver may not drive  
23 more than 11 hours after he's had 10  
24 consecutive hours off.  
25 Q. I think I understood you. But I'm

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1 going to restate it to make sure. You said  
2 it a little different. He cannot drive --  
3 at 11 hours, he must take 10 hours off of  
4 driving?  
5 A. No. He just may not drive anymore.  
6 Q. After 11 hours of driving, he cannot  
7 drive anymore?  
8 A. Until he has 10 hours off duty.  
9 Q. Right. So after 11 hours of driving,  
10 he can't drive anymore until he has 10 hours  
11 off?  
12 A. Correct.  
13 Q. And if he drives more than 11 hours  
14 without 10 hours off, then he's in violation  
15 of the rules?  
16 A. That's correct.  
17 Q. Do you see any evidence in this case  
18 that Mr. Craig Stephens ever violated the  
19 11-hour rule when he was making this trip  
20 from Pensacola to Atlanta and from Atlanta  
21 back to Pensacola?  
22 A. No, I didn't see any.  
23 Q. You would agree with me though that if  
24 he was driving more than 11 consecutive  
25 hours, then he was in violation of the rule

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1 if that was the fact?  
2 A. All I can say is that if he drove more  
3 than 11 hours since his last 10 hours off,  
4 then he would be in violation.  
5 Q. That's right. And would you agree  
6 with me -- is there any evidence in this  
7 case to you that the trip from Pensacola to  
8 Atlanta and from Atlanta back would take in  
9 excess of 12 hours, which would require 10  
10 hours off?  
11 A. You mean in excess of 11 hours?  
12 Q. Yes, in excess of 11 hours, which  
13 would require 10 hours off?  
14 A. Is there any evidence in here that  
15 that round trip would take more --  
16 Q. -- than 11 hours?  
17 A. No.  
18 Q. You haven't seen any?  
19 A. No.  
20 Q. None?  
21 A. No, sir.  
22 Q. Have you looked through the documents  
23 to try to determine if there was any?  
24 A. Yes. I looked through there. There  
25 was no evidence that I would relied on to

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1 show that the driver took longer than that.  
2 Q. Well, for the case of this deposition,  
3 tell me any evidence, whether you rely on it  
4 or not, because I want to know what you  
5 might not be relying on because it could be  
6 important. Any evidence that you did not  
7 rely on that this trip could take more than  
8 11 hours?  
9 A. This trip can be turned in probably  
10 10, 10 and a half hours.  
11 MR. BOONE: Strike that as  
12 non-responsive.  
13 Q. And at this point I'm not asking your  
14 opinion. I'm asking you about evidence in  
15 this file. Is there any evidence in this  
16 file that this trip would take more than 11  
17 hours?  
18 A. No.  
19 Q. Have you reviewed the overdue motor  
20 report filed by Mr. Bill Jones in this case?  
21 A. Yes, I would have.  
22 Q. You didn't find any information in  
23 there that could suggest that this trip  
24 could take more than 11 hours?  
25 A. Well, he indicated I think in that

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1 report that he didn't report back on a trip  
2 that he should have been back within six  
3 hours.  
4 Q. Is it your understanding from that  
5 report of overdue motor report filed by  
6 Mr. Bill Jones that he told the officer that  
7 the trip took approximately six hours?  
8 A. I think he indicated to him that he  
9 failed to return, that the trip was  
10 approximately a six-hour trip.  
11 Q. If it was six hours up and six hours  
12 back, is that more than 11 hours?  
13 A. That would be. Six and six would be  
14 12. That doesn't mean it took the driver  
15 that long.  
16 Q. Mr. Bill Jones at least reported to  
17 the police officer that the trip took  
18 approximately six hours up, six hours back?  
19 A. I think he indicated the trip was  
20 approximately six hours.  
21 Q. Up; right? Is that what you  
22 understood?  
23 A. Up and back.  
24 Q. Up and back?  
25 A. Talking about six hours total, one

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1 way.  
2 Q. One way, meaning six hours up, six  
3 hours back?  
4 A. Right.  
5 Q. Yes?  
6 A. That's not proof to me.  
7 Q. And my question was: Is there any  
8 evidence to support the trip would take over  
9 11 hours?  
10 A. No.  
11 Q. And you don't consider that evidence?  
12 A. No, I don't.  
13 Q. Even though a terminal manager in  
14 Atlanta who works for Benton says it takes  
15 six hours each way?  
16 A. I worked for DOT. I can't use as  
17 evidence something somebody says offhand in  
18 a report. I have to rely on other items,  
19 other documentation. I ran this particular  
20 trip on PC Miler. PC Miler indicates that  
21 the trip can be made in five hours and ten  
22 minutes. Now, the problem is that PC Miler  
23 runs from post office to post office. So  
24 you are adding miles and you're adding time  
25 as you go into, for example, into the center

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1 of Atlanta. It chose a post office in the  
2 center of Atlanta. Their terminal is on the  
3 south side, substantially reducing the time  
4 and routes that it had to take to do that.

5 So it's my opinion based on that, that  
6 I haven't seen any evidence that indicates  
7 that it can't be made in the time the driver  
8 logged it on there. Because somebody makes  
9 a statement in a police report that it takes  
10 about six hours to make that run, that's not  
11 proof to me or evidence that it can't be  
12 made in the five hours that he logged.

13 Q. Would you agree with me, as an expert,  
14 the best way to determine how long this trip  
15 would take would be by driving it and having  
16 experience on knowing how long it actually  
17 takes because of traffic and other factors  
18 on that route?

19 A. That would be the best possible way to  
20 do it, certainly.

21 Q. And do you believe a terminal manager  
22 who sends his drivers day in and day out  
23 between Pensacola and Atlanta would be the  
24 best person to know how long it takes to  
25 make that trip?

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1 A. I don't know that to be the case, no.

2 Q. Would you expect, as somebody who's  
3 here saying they're testifying about  
4 industry practices, that a terminal manager  
5 would be the person in the best position to  
6 testify and say how long it takes his  
7 drivers to make a trip?

8 A. Not necessarily, no.

9 Q. You wouldn't expect the terminal  
10 manager to be the best person to know how  
11 long a particular trip would take?

12 A. No. I think the driver making the run  
13 would be the person in the best position to  
14 do that.

15 Q. And that person who runs it is  
16 supposed to have answered to their terminal  
17 manager?

18 A. Sure. I guess he does.

19 Q. And whatever that person does, their  
20 terminal manager is expected to manage him  
21 and know what he does?

22 A. He's expected to manage him.

23 Q. A terminal manager is expected to know  
24 how long their drivers take to make a trip?

25 A. Some do; some don't.

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1 Q. Do you have any information to suggest  
2 that when Mr. Bill Jones gave this  
3 information to the police officer that he  
4 did not know how long it takes?

5 A. I have no idea.

6 Q. Do you have any reason --

7 A. It was his opinion that it was  
8 approximately six hours.

9 Q. And that police report is part of the  
10 information that you received?

11 A. On those CDs, yes, sir.

12 Q. And it's information I gather now that  
13 you did not rely on in anyway?

14 A. No. I relied on PC Miler. I relied  
15 on what I normally did when I was with DOT  
16 to try to determine if a log was false or  
17 had potential to be false.

18 Q. Despite the testimony of somebody who  
19 supervises truck drivers who make that run  
20 everyday?

21 A. I'm sure I wouldn't rely on some  
22 statement somebody made in the police  
23 report. I rely on the other information  
24 that I had too and DOT. I could not take  
25 that statement that he indicated to the

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1 police officer it's about a six-hour run and  
2 use that as a case to prosecute before an  
3 administrative law judge with DOT. I would  
4 get laughed out of court.

5 Q. You can undertake an investigation if  
6 somebody tells you it takes six hours, which  
7 is in violation of the rules, that could  
8 trigger you to look at it closely and  
9 actually verify whether it does or does not?

10 A. I could take an investigation any time  
11 I wanted to. But if I ran it under PC  
12 miler, and it shows five hours and ten  
13 minutes run, I'm not going to listen to what  
14 this guy says and institute an investigation  
15 on something a driver is logging for five  
16 hours. No, I would not.

17 Q. Let's talk about this PC miler  
18 quickly. Which speed -- do you determine  
19 what information goes in PC miler as far as  
20 speed?

21 A. You do to an extent. You can set the  
22 average speed for each of the types of road  
23 that it's operating on.

24 Q. And did you do that?

25 A. Yes.